

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TERRELL ZEIGLER,

Plaintiff,

v.

ACTING COMMISSIONER ANTHONY J.
ANNUCCI, LEROY FIELDS, STEPHEN
URBANSKI, *and* AKINOLA AKINYOMBO,

Defendants.

No. 23-CV-707 (KMK)

ORDER

KENNETH M. KARAS, District Judge:

Plaintiff Terrell Ziegler (“Plaintiff”) brings this Action pro se under 42 U.S.C. § 1983. (*See generally* Compl. (Dkt. No. 2).) On February 1, 2023, the Court granted Plaintiff’s request to proceed in forma pauperis (“IFP”), that is, without prepayment of fees. (*See* Dkt. No. 5.) On March 3, 2023, the Court issued an Order of Service dismissing Plaintiff’s claims against the New York State Department of Corrections and Community Supervision and directing the U.S. Marshals Service to complete service on the Defendants. (Dkt. No. 7.) On October 23, 2023, Defendants filed a Motion to Dismiss. (Dkt. No. 21). After extensions, Plaintiff filed his Opposition on February 6, 2024, (Dkt. No. 24), and Defendants replied, (Dkt. No. 27).

On September 20, 2024, the Court issued an Opinion and Order granting in part and denying in part Defendants’ Motion. (Dkt. No. 28.) The Court dismissed without prejudice Plaintiff’s claims against Defendants Annucci and Urbanski, (*id.* at 31), and noted that Plaintiff had failed to serve Defendant Akinyombo, (*id.* at 24–25). The Court set a deadline of October 20, 2024, for Plaintiff to file an Amended Complaint and serve Defendant Akinyombo. (*Id.* at 31.) Plaintiff has failed to do either. (*See* Dkt.) On November 4, 2024, Defendants requested

that the Court “order Plaintiff to file an Amended Complaint and properly serve Defendant Akinyombo by a [particular] date” or dismiss with prejudice Plaintiff’s claims against Defendants Annucci, Urbanski, and Akinyombo, and allow Defendant Fields until November 22, 2024, to file an Answer to the Complaint. (*See* Ltr. from Defs. to the Court (Dkt. No. 29).) As of the date of this Order, Plaintiff has neither filed an Amended Complaint nor otherwise communicated with the Court.

Accordingly, it is hereby ORDERED that Plaintiff shall file an Amended Complaint by no later than November 26, 2024, and shall serve Defendant Akinyombo by no later than December 31, 2024. If Plaintiff fails to meet this deadline, his claims against Defendants Annucci, Urbanski, and Akinyombo may be dismissed with prejudice for failure to prosecute. *See* Fed. R. Civ. P. 41(b) (permitting dismissal of an action for failure to prosecute); *Murphy v. L.A. Spaulding et al.*, No. 20-CV-9013, 2020 WL 1063138, at *1 (S.D.N.Y. Mar. 30, 2022) (dismissing case brought by pro se plaintiff for failure to prosecute); *Armstrong v. Guiccione*, 470 F.3d 89, 103 n.1 (2d Cir. 2006) (noting that “a federal district court has the inherent power to dismiss a case sua sponte for failure to prosecute” (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630–32 (1962))). It is further ORDERED that Defendants’ time to answer or move with respect to the Complaint is stayed until this issue is resolved.

The Clerk of Court is respectfully directed to mail a copy of this Order to Plaintiff.

SO ORDERED.

DATED: November 6, 2024
White Plains, New York



KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE